Definition of human rights
- They are rights we have by virtue of being human and so every human automatically has them, they don’t need to be formally given
- They are inalienable and cannot be taken away
- They are codified at various levels
  - National
  - EU level
  - International

Origin
- They come from the natural law of the world
- Can be considered moral rules for life
- WW2 and totalitarian regimes made them more necessary
- Human dignity is preserved through human rights

Classification of human rights
- Constant process of finding more and established more clearly the human condition
- There are various generations of rights:
  - Civil and political rights
  - Economic, social and cultural rights
  - Communication and environmental rights
  - Rights for women, children, disabled and vulnerable people, and bioethical rights

Protection of international rights
- UDHR
- ICCPR and its Optional Protocol 1
- ICESCR
- There is a paradox of the huge advancement in human rights but a lack of actual implementation of them
- Paradox of advancement in technology and rights not being able to keep up
- Unfortunate gap between formal recognition of rights and their actual enforcement and accountability

Health care and human rights
- These were more apparent after the Nuremberg Trials and the uncovering of nazi experimentation
- Established the need for informed consent for any experimentation
- The right to physical and mental health (e.g. art.12 ICESCR
- Often a social justice problem in terms of the distribution of right and funding for particular types of medicines
LEGAL POSITIVISM

Legal positivism
- Superiority of positive law over natural law
- Reductionist theory that only positive law exists
- Monistic theory of law because only positive law exists and nothing else
  - Natural law doesn’t exist, and is also not law
  - Denial of existence and lawfulness of natural law

Theory of positive law
- Application of the scientific method to the study of law, i.e. the judgement of facts and not values (study, hypothesis, demonstration)
- Radical separation of law from ethics
  - Jurists should observe law as a fact
  - This type of observation only allows for positive law to exist by definition
  - E.g. not deciding based on justice/injustice, but rather the legality/illegality according to the positive law
  - Not allowed to judge based on the moral compass of natural law
- Strongly linked to verification and falsification of facts and leaves no room for values as they are too subjective
- Generally this theory is much more closely linked to civil law systems as opposed to common law ones
- Facts are objective (and therefore more suited to legislation), values are subjective

Concept of validity
- Main concept of the theory of positive law
  - Validity is simply the technical correctness of a legal norm
  - Legalism reduced the idea of justice down to validity, saying that laws are just simply because they are valid
  - This is the view of Hobbs
- The more moderate view:
  - Legality (i.e. our behaviour corresponding with the law) is the criterion for lawfulness
  - Obedience to law guarantees peace and social order
  - Everyone imposing their own subjective views as law would result in huge amounts of conflict
- Validity pertains to the formal existence of law
- Whether something is valid and whether something is just are sometimes two very different things according to people’s subjective views (e.g. abortion law)
  - Validity is formal, justice is ethical
- Separation of law and ethics can be very dangerous
  - Fear of punishment becomes the only real reason to obey law, not because of morals but an exterior obligation
  - Makes citizens very passive in deciding what is legal or valid, or even ethical
- Philosophy of law is against formalistic legal positivism because it doesn’t allow for critique of the law